

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Animal Adventure, LLC,

Court File No. _____

Plaintiff,

v.

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

Kellytoy (USA) Inc. and Kellytoy
Worldwide, Inc.,

Defendants.

Plaintiff Animal Adventure, LLC, (“Animal Adventure”) for its Complaint against Defendants Kellytoy (USA) Inc. and Kellytoy Worldwide, Inc. (collectively “Kellytoy”), states and alleges as follows:

THE PARTIES

1. Animal Adventure is a Delaware corporation with its principal place of business at 1114 South 5th Street, Hopkins, MN 55343. Animal Adventure creates high-quality, original plush toys sold in Minnesota and throughout the United States.

2. Upon information and belief, Kellytoy (USA) Inc. is a California corporation with its principal place of business at 4811 South Alameda Street, Los Angeles, CA 90058.

3. Upon information and belief, Kellytoy Worldwide, Inc. is a California corporation with its principal place of business at 4811 South Alameda Street, Los Angeles, CA 90058.

4. Upon information and belief, Kellytoy makes plush toys and sells them in Minnesota and throughout the United States.

JURISDICTION AND VENUE

5. This is an action for copyright infringement arising under 17 U.S.C. §§ 101 *et. seq.*

6. This Court has subject matter jurisdiction over this matter under 17 U.S.C. § 501, and 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Kellytoy because Kellytoy engages in substantial business in this judicial district and has committed tortious acts within this district. Upon information and belief, and as alleged in more detail below, Kellytoy conducts business operations that create, market, and sell products in Minnesota that infringe on Animal Adventure's copyrights.

8. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and 1400.

FACTS

Animal Adventure's 'Frog Kisses' Work

9. In 2010, Animal Adventure designed and created an original visual work entitled "Frog Kisses." Images of the Frog Kisses work appear below.



10. Animal Adventure has been making, marketing, and selling copies of the Frog Kisses work, in Minnesota and throughout the United States, since at least June 30, 2011.

11. The Frog Kisses work is an original work that may be copyrighted under United States law.

12. On March 11, 2015, Animal Adventure applied to the copyright office to register the Frog Kisses work.

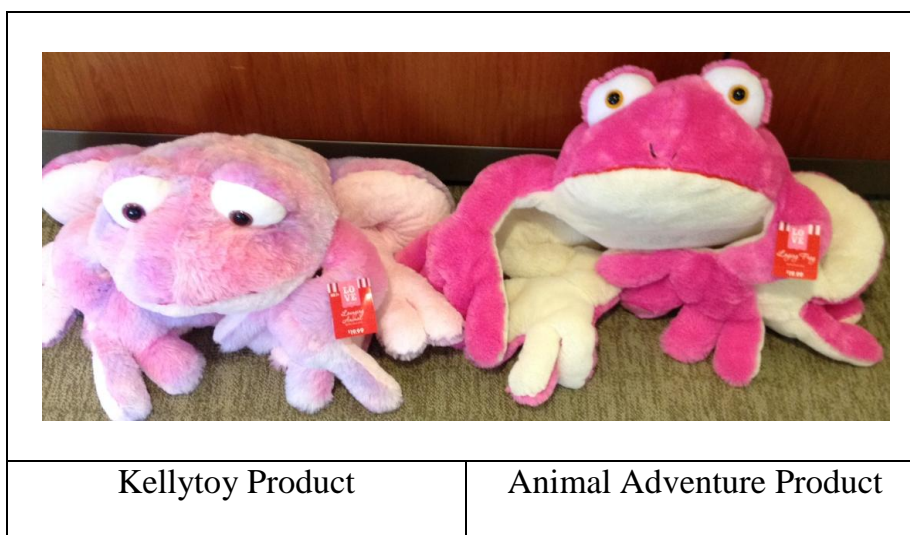
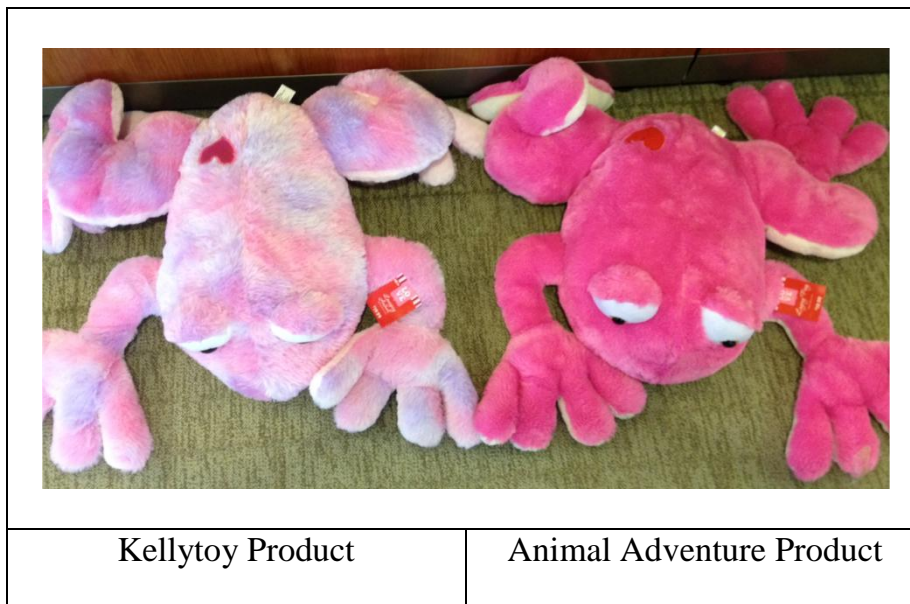
13. Animal Adventure received a certificate of registration for the Frog Kisses work dated April 16, 2015, and identified as VA0001950812.

14. Animal Adventure is and has at all times remained the sole owner of the copyright in the Frog Kisses work.

15. Animal Adventure has the exclusive right to reproduce, prepare derivative works, and distribute the Frog Kisses work in the United States.

16. On information and belief, Kellytoy has directly infringed Animal Adventure's copyright in the Frog Kisses work by creating, marketing, and selling unlicensed and unauthorized copies of the work, in Minnesota and throughout the United

States. Images depicting the substantial similarities between Kellytoy's infringing copies and Animal Adventure's original Frog Kisses work appear below.



17. Animal Adventure has notified Kellytoy in writing of Kellytoy's infringement of the Frog Kisses work.

18. On information and belief, Kellytoy continues to produce, market, and sell unauthorized copies of the Frog Kisses work.

Animal Adventure's "Hop Scotch Bunny" Work

19. In 2009, Animal Adventure designed and created an original visual work entitled "Hop Scotch Bunny." An image of the Hop Scotch Bunny work appears below.



20. Animal Adventure has been making, marketing, and selling copies of the Hop Scotch Bunny work, in Minnesota and throughout the United States, since at least November 1, 2009.

21. The Hop Scotch Bunny work is an original work that may be copyrighted under United States law.

22. On March 11, 2015, Animal Adventure applied to the copyright office to register the Hop Scotch Bunny work.

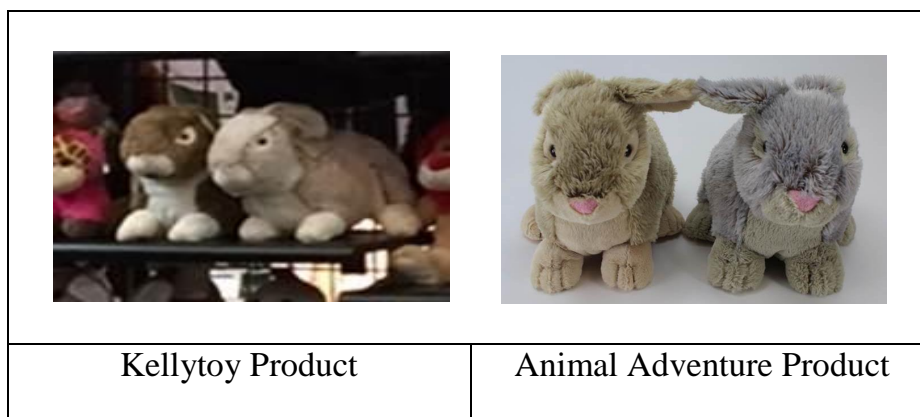
23. Animal Adventure received a certificate of registration for the Hop Scotch Bunny work dated March 11, 2015, and identified as VA0001952965.

24. Animal Adventure is and has at all times remained the sole owner of the copyright in the Hop Scotch Bunny work.

25. Animal Adventure has the exclusive right to reproduce, prepare derivative works, and distribute the Hop Scotch Bunny work in the United States.

26. On information and belief, Kellytoy has directly and willfully infringed Animal Adventure's copyright in the Hop Scotch bunny work by creating, marketing, and selling unlicensed and unauthorized copies of the work, in Minnesota and throughout the

United States. Images depicting the substantial similarities between Kellytoy's infringing copies and Animal Adventure's original Hop Scotch Bunny work appear below.



27. Animal Adventure has notified Kellytoy in writing of Kellytoy's infringement of the Hop Scotch Bunny work.

28. On information and belief, Kellytoy continues to produce, market, and sell unauthorized copies of the Hop Scotch Bunny work.

COUNT I – COPYRIGHT INFRINGEMENT

29. Animal Adventure re-alleges and incorporates by reference as set forth in full the allegations contained in the paragraphs above.

30. Animal Adventure is the owner of the Frog Kisses and Hop Scotch Bunny works (collectively, the "Copyrighted Works").

31. Animal Adventure has the exclusive right to reproduce, prepare derivative works, distribute, and publically display the Copyrighted Works in the United States.

32. Kellytoy has infringed Animal Adventure's exclusive copyrights, including the rights of reproduction, distribution, and public display, in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501.

33. Kellytoy's acts of infringement have been deliberate, willful, intentional and purposeful, in reckless disregard of and with indifference to Animal Adventure's rights.

34. As a direct and proximate result of Kellytoy's infringement, Animal Adventure has sustained and will continue to sustain irreparable injury. Unless enjoined and restrained by this Court, Kellytoy will continue to infringe Animal Adventure's copyrighted works. Animal Adventure is entitled to injunctive relief.

35. Animal Adventure is entitled to its actual damages, including lost profits, stemming from Kellytoy's copyright infringement and is additionally entitled to recover the improper profits gained by Kellytoy through its infringement. Animal Adventure furthermore reserves its right to elect statutory damages to the extent allowed by law.

PRAYER FOR RELIEF

Wherefore, Animal Adventure prays that judgment be entered declaring:

- a) That Animal Adventure owns valid and enforceable copyrights in the Frog Kisses and Hop Scotch Bunny works;
- b) That Kellytoy has directly infringed Animal Adventure's copyrights;
- c) That Kellytoy and its agents be enjoined from further infringing Animal Adventure's copyrights;
- d) That Kellytoy be immediately enjoined from disposing of any copies of the Frog Kisses or Hop Scotch Bunny works by sale or otherwise;
- e) That Kellytoy be ordered to account for and pay to Animal Adventure all profits and advantages gained from infringing Animal Adventure's copyrights;
- f) That Kellytoy be ordered to pay to Animal Adventure such damages as Animal Adventure has sustained as a proximate result of

Kellytoy's copyright infringement, including without limitation all lost profits suffered by Animal Adventure;

- g) That Kellytoy be ordered to pay the maximum statutory damages allowed under the Copyright Act, including reasonable attorneys' fees and costs, should Animal Adventure be entitled to elect and actually elect to receive statutory damages;
- h) That Kellytoy be ordered to deliver for impoundment during the pendency of this action all copies of the Frog Kisses and Hop Scotch Bunny works in its possession, custody, or control;
- i) That Kellytoy be ordered to deliver for destruction all infringing copies of the Frog Kisses and Hop Scotch Bunny works in its possession, custody, or control and all materials for making such infringing copies in its possession, custody, or control; and
- j) That Animal Adventure be awarded any other just relief.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Animal Adventure demands a trial by jury as to all issues so triable.

Dated: October 29, 2015

s/Ted C. Koshiol

Ted C. Koshiol (#0390542)

Lora M. Friedemann (#0259615)

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